IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4937 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABBASBHAI JIVABHAI

Versus

GSRTC

Appearance:

MR PM DAVE for Petitioner

MR YOGESH S LAKHANI for Respondent

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/03/2000

ORAL JUDGEMENT

Rule. Mr Yogesh Lakhani, learned counsel for the respondent waives service of Rule.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the order passed by the Competent Authority under the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as "the Act") in Eviction Case No. 50/93 as confirmed by the judgment and order

dated 14.6.1999 passed by the learned Extra Assistant Judge, Jamnagar in Regular Civil Appeal No. 57/98.

3. The petitioner was granted a licence to run a dry fruit stall at S.T. Bus Station at Dhrol at a monthly rent which, at the relevant time, was Rs.3901-30. The licence in favour of the petitioner was for the period between 11.8.1992 to 10.7.1993. The Competent Authority under the Act being an officer of the Gujarat State Road Transport Corporation served notice dated 5.7.1993 calling upon the petitioner to hand over vacant possession of the stall as the petitioner was alleged to be an unauthorised occupant with effect from 11.7.1993. The petitioner submitted his reply and raised various defenses. The Competent Authority negatived all the contentions raised by the petitioner and held that the petitioner was an unauthorised occupant after 11.7.1993 and that the petitioner had also committed breach of the terms of the licence. The allegation that the petitioner has committed breach of the terms of the licence by selling popcorn at the dry fruit stall was accepted by the Competent Authority and the order of eviction was passed on 18.4.1998. The petitioner carried the matter in appeal before the District Court under Section 9 of the Act. After hearing the parties, the learned District Judge has dismissed the appeal on 14.6.1999. Hence, the present petition.

4. At hearing of this petition, Mr Kharadi, learned counsel for the petitioner has raised the same contentions which were raised before the lower authorities and has further submitted that although the possession of the stall has been taken away by the respondent authority, the same is not handed over to any party so far and that the petitioner is prepared to submit his offer in case the respondent authority issues a public advertisement inviting bids for the stall in question.

5. In this petition under Articles 226 and 227 of the Constitution, it is not possible to accept the contentions on mixed questions of law and fact raised on behalf of the petitioner as both the authorities below have given concurrent findings of fact that the licence has not been renewed after 1993. Considering the fact that the premises in question are public premises covered by the Act and also considering the fact that the period of licence expired as far back as in 1993, while no fault can be found with the impugned orders, the alternative request made on behalf of the petitioner deserves to be accepted. The Court proceeds on the footing that

although the possession of the stall has been taken over by the S.T. Corporation, the same is not handed over to any other party so far. Proceeding on that footing, it is directed that the respondent Corporation shall issue a public advertisement inviting bids for the stall in question and that the petitioner shall also be permitted to offer his bid and after considering all such bids in accordance with law, the respondent Corporation shall award a fresh licence for running the stall. The Court does not tie down the Corporation to any condition that the stall in question has to be a dry fruit stall. Depending on the requirements of the public at large, the Corporation will be at liberty to give licence for running the stall in question for such legitimate purpose as may be required for the public at large i.e. for the passengers at the bus station and till such exercise is undertaken and the licence is awarded to a party in accordance with the aforesaid procedure, the respondent Corporation shall permit the petitioner to run his dry fruit stall at Dhrol bus station at a monthly rent of Rs.3901-30. The petitioner shall pay such monthly charges in advance and the petitioner shall also pay all the arrears, if any, for the period during which he was running the stall, within one month from today.

6. The petition is accordingly disposed of in terms of the aforesaid directions.

7. Subject to the aforesaid directions, Rule is discharged.

March 28, 2000 (M.S. Shah, J.)
sundar/-